

1 HONORABLE RICHARD A. JONES
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 R.W. and R.J.T.,

11 Plaintiffs,

12 v.

13 LIBERTY MUTUAL FIRE INSURANCE
14 COMPANY,

Defendant.

Case No. C16-465 RAJ

ORDER

15 **I. INTRODUCTION**

16 This matter comes before the Court on Plaintiffs' R.W. and R.J.T.'s Motion for
17 Partial Summary Judgment Re Breach of Contract (Dkt. # 11). For the reasons that
18 follow, the Court **DENIES** Plaintiff's motion.

19 **II. BACKGROUND**

20 Plaintiffs are the policyholders of a homeowner's insurance agreement with
21 Defendant Liberty Mutual Fire Insurance Company ("Liberty"). Dkt. # 13-3. The policy
22 entitles them to coverage against property damage, but imposes a \$5,000 limit on losses
23 caused by mold. Dkt. # 13-3 at 34-35, 56-57.

24 On March 9, 2014, Plaintiffs discovered that their dishwasher was leaking. Dkt.
25 # 11-1 ¶ 3. They reported the leak to Liberty on March 13. Dkt. # 13-3 at 3. Liberty
26 arranged for a contractor, Rainbow International ("Rainbow"), to provide remediation
27 services. Dkt. # 13-1 at 3. When Rainbow arrived the following day, Plaintiffs signed a
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1 work authorization permitting Rainbow to remediate the leak. Dkt. # 13-4. Rainbow
2 concluded that the bottom of the dishwasher had rusted out, causing water to seep into
3 parts of the kitchen and the laundry/utility room below. It used dehumidifiers to extract
4 moisture from the affected areas and removed damaged cabinetry, drywall, and tiling.
5 Dkt. # 13-5. During this process, Rainbow discovered mold that it believed had predated
6 the dishwasher leak. *Id.* at 5, 14. Although Rainbow took steps to remove the mold, its
7 dehumidification efforts exacerbated the problem by dispersing mold spores throughout
8 portions of the house. Dkt. # 13-2 at 7-8; Dkt. # 13-10 at 3; Dkt. # 13-12 at 2-3.

9 Liberty covered certain losses caused by the dishwasher leak, but asserted that the
10 portion of losses attributable to mold is contractually limited to \$5,000. Dkt. # 11-3 at
11 69. It hired Rimkus Consulting Group, Inc. (“Rimkus”) to investigate the mold damage.
12 Rimkus identified ten “moisture sources,” only one of which was the dishwasher leak.
13 Dkt. # 13-2 at 5-6 (identifying dishwasher leak as “Moisture Source #1”). Rimkus also
14 identified numerous locations throughout Plaintiffs’ home that exhibited signs of mold
15 growth and, for each location, offered an opinion as to the cause. *Id.* at 5-8. It opined
16 that the dishwasher leak had caused mold to grow in the kitchen and the laundry/utility
17 room, as well as “a small portion of the closet in bedroom #4.” *Id.* at 5. According to
18 Rimkus’ report, however, the dishwasher leak was not entirely to blame. In bedroom #4,
19 a considerable portion of the mold was attributable to “exterior moisture intrusion.” *Id.*
20 (identifying exterior moisture intrusion as “Moisture Source #2”). The same was true for
21 the laundry/utility room. *Id.* at 15. As for Rainbow’s role in causing the problem,
22 Rimkus confirmed that Rainbow’s remediation work had exacerbated the issue, but in a
23 later report, emphasized that it was not solely at fault. Dkt. # 13-12 at 7 (“[W]e disagree
24 that Rainbow’s work was solely responsible for all fungal contamination within the
25 subject home. As previously mentioned, the home was plagued by numerous sources of
26 historic and ongoing moisture intrusion, none of which have been addressed except for
27 the dishwasher leak.”).

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1 Liberty hired a contractor, Paul Davis Restoration (“Paul Davis”), to estimate the
 2 cost of remediating the mold problem. Dkt. # 13-8. According to Paul Davis, it would
 3 cost \$4,252.79 to remove the mold growing in the kitchen and laundry/utility room and
 4 \$1291.35 for the mold in bedroom #4.¹ *Id.* at 2, 5-9, 16-17. Remediating the mold
 5 throughout the remainder of the house would cost nearly \$40,000. *Id.* at 2. Liberty
 6 advised Plaintiffs that the mold damage to the kitchen and laundry/utility room was
 7 covered under their policy, but that this damage was subject to a limit of \$5,000. *Id.* It
 8 paid this amount. *Id.*

9 On March 16, 2015, Plaintiffs filed the instant action in state court alleging claims
 10 against Liberty for: (1) breach of contract; (2) violation of the Washington Consumer
 11 Protection Act; (3) the tort of insurance bad faith; (4) and violation of the Washington
 12 Insurance Fair Conduct Act. Dkt. # 1-1 at 7-8. The action was then removed to this
 13 Court. Dkt. # 1. Plaintiffs have since filed a motion for partial summary judgment.
 14 Dkt. # 11. They contend there is no genuine dispute as to any material fact concerning
 15 Liberty’s liability for breach of contract. Liberty opposes the motion. Dkt. # 12.

16 **III. LEGAL STANDARD**

17 Summary judgment is appropriate if there is no genuine dispute as to any material
 18 fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P.
 19 56(a). The moving party bears the initial burden of demonstrating the absence of a
 20 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).
 21 Where the moving party will have the burden of proof at trial, it must affirmatively
 22 demonstrate that no reasonable trier of fact could find other than for the moving party.
 23 *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). If the moving
 24 party meets the initial burden, the opposing party must set forth specific facts showing

25 ¹ Plaintiffs assert that the estimated cost of remediating bedroom #4 was \$1,144.
 26 Dkt. # 14 (citing report of Paul Davis). They calculate this figure by adding certain itemized
 27 costs pertaining to bedroom #4. In doing so, however, Plaintiffs ignore that the report of Paul
 28 Davis includes a separate itemization of the costs required to remediate the closet.

1 that there is a genuine issue of fact for trial in order to defeat the motion. *Anderson v.*
 2 *Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). The court must view the evidence in the
 3 light most favorable to the nonmoving party and draw all reasonable inferences in that
 4 party's favor. *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150-51 (2000).

5 **IV. DISCUSSION**

6 Plaintiffs contend that summary judgment should be granted on their claim for
 7 breach of contract. In their view, the evidence indisputably shows the dishwasher leak
 8 caused more than \$5,000 in mold damage. Relying upon this characterization of the
 9 evidence, Plaintiffs argue that Liberty's denial of coverage for mold damage exceeding
 10 \$5,000 breached the insurance agreement because it violated the "efficient proximate
 11 cause" rule of insurance law.²

12 Washington follows the "efficient proximate cause" rule in analyzing coverage.
 13 Efficient proximate cause is the "predominant cause which sets into motion the chain of
 14 events producing the loss." *Graham v. Pub. Employees Mut. Ins. Co.*, 656 P.2d 1077,
 15 1081 (Wash. 1983). "If the efficient proximate cause of the loss is insured against, the
 16 loss is covered even though other events within the chain of causation are excluded from
 17 coverage." *Churchill v. Factory Mut. Ins. Co.*, 234 F. Supp. 2d 1182, 1187 (W.D. Wash.
 18 2002). Whether a particular peril constitutes the efficient proximate cause of a loss is a
 19 question of fact. *Graham*, 656 P.2d at 1081. "[O]nly when the facts are undisputed and
 20 the inferences therefrom are plain and incapable of reasonable doubt or difference of
 21 opinion that it may be a question of law for the court." *Id.*

22 The Court cannot resolve Plaintiffs' breach of contract claim on summary
 23 judgment because it is a genuinely disputed issue whether the dishwasher leak was the
 24 efficient proximate cause of more than \$5,000 in mold damage.³ According to Rimkus,

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 26 ² As emphasized in their Reply, "Plaintiffs are not arguing that Liberty Mutual should
 27 have covered any pre-existing mold that was unrelated to the dishwasher leak." Dkt. # 14 at 2.
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³ Plaintiffs, however, are correct that Liberty cannot use the \$5,000 policy limit on mold
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1 the dishwasher leak caused mold to grow in three locations: (1) the kitchen; (2) the
2 laundry/utility room; and (3) bedroom #4. Dkt. # 13-2 at 5, 15. But the dishwasher leak
3 was only partially to blame for the mold problem in the laundry/utility room and bedroom
4 #4. *Id.* at 15. The mold in those rooms was also attributable to exterior moisture that had
5 seeped through the walls. *Id.* According to the estimate provided by Paul Davis, the
6 combined cost of repairing the kitchen and laundry/utility room was \$4,252.79.
7 Dkt. # 13-8 at 2, 5-9. At this stage, it is impossible to apportion which of those losses
8 were predominantly caused by the dishwasher leak as opposed to the intrusion of exterior
9 moisture. That is a task for the factfinder. The same goes for bedroom #4. Paul Davis
10 estimated that it would cost \$1291.35 to remediate bedroom #4, *id.* at 17, but there is
11 evidence that the mold damage caused by the dishwasher leak was limited to the closet,
12 Dkt. # 13-8 at 15. In fact, the report of Paul Davis indicates that remediating the closet
13 would cost only \$146.10. Dkt. # 13-8 at 17.

14 As for Rainbow's detrimental remediation efforts, there is no undisputed evidence
15 establishing the extent to which their involvement contributed to the growth of mold in
16 Plaintiffs' home. Although Liberty stated in a letter to Plaintiffs that Rainbow was
17 responsible for spreading mold to the kitchen and laundry/utility room, Dkt. # 10 at 3,
18 this does not change Rimkus' conclusion there were additional causes for the mold in
19 those rooms. In any event, even Plaintiffs acknowledge it is "arguable" whether
20 Rainbow's exacerbation of the mold problem is a "third force" in the chain of events
21 linking the dishwasher leak to the mold damage. Dkt. # 14 at 8. Because there are
22 genuinely disputed issues of material fact whether the dishwasher leak was the efficient
23 proximate cause of more than \$5,000 in losses, Plaintiffs are not entitled to summary
24 judgment on their claim for breach of contract.

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27 damage to circumvent the efficient proximate cause rule. Under that rule, Liberty must cover
any losses that were predominantly caused by the dishwasher leak.

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V. CONCLUSION

For the reasons stated above, the Court **DENIES** Plaintiffs' Motion for Partial Summary Judgment Re Breach of Contract (Dkt. # 11).

DATED this 26th day of September, 2016.

Richard D. Jones

The Honorable Richard A. Jones
United States District Judge